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C O N F I D E N T I A L SECTION 01 OF 03 ZAGREB 000722

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SUBJECT: CROATIA CONTINUING INVESTIGATIONS WHILE PREPARING
FOR ICTY HEARING

REF: ZAGREB 694

Classified By: Political Officer Chris Zimmer for Reasons 1.4 (b) and (d).

¶1. (C) SUMMARY: The Government of Croatia is preparing for a Trial Chamber hearing at The Hague on December 16 to assess its cooperation with the ICTY, which the GoC sees as a critical juncture in Croatia's EU accession process. Justice Minister Simonovic told the Ambassador on December 8 that if Chapter 23 (Judiciary and Fundamental Rights) remains blocked through the spring of 2010, it could combine with other factors to have a destabilizing effect on the country. Ambassador Foley offered suggestions for enhancing the work of the Task Force and to shape GOC public attitudes on the documents and ICTY cooperation. The two agreed to consult again in mid-January to review any further results of the GoC Task Force and a ruling by the Trial Chamber which might give impetus to the EU to move on Chapter 23. END SUMMARY.

Brammertz Not Interested in Task Force's Work

¶2. (C) Ambassador Foley met with Justice Minister Ivan Simonovic on December 7 to discuss the GoC's continuing investigations into the missing artillery documents and the upcoming hearing at ICTY on Croatia's cooperation, as well as strategies for unblocking Chapter 23 (Judiciary and Fundamental Rights) in the EU accession process (Reftel). The Minister said that the Task Force will continue to establish an ever more complete record of the disappearance of the documents and who was responsible, but added that it was unlikely the documents will be found. Simonovic fears that Brammertz is not interested in a credible investigation which fails to produce documents, however. Given that the most likely success the Task Force could produce will be "additional explanations of how the documents disappeared," he was concerned that the work of the Task Force may be futile. He said that Brammertz accuses the GOC of trying to run out the clock with the trial nearing its conclusion, but the GOC has no illusions and understands that Brammertz will continue to insist on Croatia producing the documents throughout the appeals process.

Simonovic later said that he is "pretty convinced that documents exist" (in the hands of people around General Gotovina), so there remains a slim possibility some could still be recovered.

Continued Blockade Would Be Catastrophe

¶ 3. (C) Simonovic said that if Chapter 23 and Croatia's EU accession remained blocked through two more years of the appeals process it would be "a catastrophe." In fact, he thought the critical point would come as early as next spring. The state's finances are likely to be weak, requiring a rebalancing of the budget which could have significant social consequences. He said that if the EU path were not open at that point, it could be destabilizing not only to the GOC but to the country. The Ambassador acknowledged the stakes in the Chapter 23 blockade, but said the USG could not hope to intervene successfully with key EU parties without positive developments to point to. Finding documents was the only certain way; we want in any event to see what the GOC and its Task Force could produce over the next month. Simonovic said that he recently spoke to the Finnish Foreign Minister, who said Croatia "is very close to opening Chapter 23." Simonovic said this would leave the Dutch and British as the lone firm opponents to unblocking

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negotiations.

Trial Chamber a Critical Step; Potential for Public Backlash

¶ 4. (C/NF) Both the Ambassador and Minister agreed that the Trial Chamber's actions -- both the December 16 hearing on Croatia's cooperation and especially the subsequent decision expected in January -- would prove critical milestones. Simonovic said that he hopes Croatia's presentation on Dec. 16 might help sway the UK and the Netherlands to soften their positions. The GOC would make it clear to the Trial Chamber that all the Task Force's evidence points straight to Gotovina and his associates as responsible for stealing the documents. The message, he said, will be that the GOC is not protecting anyone for things they have done in the past and wants the truth to be uncovered. Simonovic did express concern that the GOC's willingness to continue its investigation may undermine its hopes of getting the Chamber to rule that Croatia has completely fulfilled the Court's order of September 16, ¶ 2008. Realistically, the best outcome the GoC can look for would be that the Court states that Croatia is cooperating and making progress and urging that the investigation should continue. A positive ruling of this type might give the UK and Netherlands grounds to permit the opening of Chapter 23.

¶ 5. (C/NF) Accusing Gotovina and his team in open court is very delicate for the GOC, Simonovic said, given Gotovina's standing as a national hero with the Croatian population. Simonovic is even concerned with the physical configuration of the courtroom and whether the GOC experts would have Gotovina in their field of vision during their presentation. Ambassador Foley stressed the importance of top GOC leadership communicating

to the public that Gotovina's personal interests were deeply at odds with the nation's interests.

Amnesty for Documents?

¶6. (C) To increase cooperation from the public, the Ambassador suggested that authorities offer amnesty to anyone who comes forward with documents or information about their destruction. This would also require clear public messages from the GOC leadership that helping the government to find the documents was in the national interest. At first, Simonovic was concerned about making an amnesty offer after prosecutors won three successful convictions against persons involved in concealing or destroying documents, but later said that he found the suggestion intriguing.

¶7. (C/NF) Both sides agreed to consult again in mid-January once the Task Force has additional results and in expectation of a Trial Chamber ruling on Croatia's cooperation which might give impetus to the EU to move forward on Chapter 23. Simonovic expects the Trial Chamber's decision will be more positive than Brammertz's recent assessments, but that after mid-January he sees no other event that could be used to sway EU opinions until possibly in the summer, when he expects a verdict in the Gotovina case.

¶8. (C/NF) Prime Minister Kosor's foreign policy advisor, Davor Stier, provided a more upbeat assessment to the Ambassador later on December 8. Stier felt that an important psychological milestone had been reached in the past week. On the one hand, Brammertz had discovered that he could risk acknowledging GoC good faith and progress without the Croatians using that to argue that further investigation and cooperation was unnecessary. The Croats' assumption that Brammertz would never recognize progress on their part, no matter what they did, had also been overturned.

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Stier said Kosor had given the investigative Task Force marching orders over last weekend to invigorate their efforts, and he expressed guarded optimism that further positive results could be achieved.

¶9. (C/NF) COMMENT: The Croatians clearly understand the need to continue their improved investigative efforts, but are deeply concerned with what it will mean for their EU negotiations if even the best investigation in the world fails to turn up the documents. Although Brammertz has now acknowledged progress, he has still been unwilling to give a signal to the EU that cooperation is sufficient to allow Chapter 23 negotiations to begin. The Trial Chamber's hearing and ruling therefore may be Croatia's best hope of convincing EU Member States that the GoC is doing what it can to investigate the documents, and is committed to continuing to do so. But the Croatians also need to be prepared for what to do if the Chamber's decision is negative, or even inconclusive. Simonovic jokingly observed that then all they could do would be to "hang every person involved in the investigations to date", including himself. END COMMENT.
FOLEY